85-2168

No. .....

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

JAMES N. FLEMING,

Petitioner,

v.

W. BEDFORD MOORE, III,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

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QUESTIONS PRESENTED

1. What types of statements constitute expressions of "opinion" that are absolutely privileged under the First Amendment?

2. Where a white plaintiff brought suit for libel against a black man who had asserted the plaintiff was prejudiced against blacks, was the award by an all-white jury of $233,333 in actual and punitive damages so excessive as to violate the First Amendment?

3. In a civil case involving sensitive racial issues, is the deliberate use of peremptory challenges by a white plaintiff to remove all blacks from the jury forbidden by Batson v. Kentucky, No. 84-6263?

4. Is the decision of the Virginia Supreme Court inconsistent with Bose Corp. v. Consumers Union, 80 L.Ed.2d 502 (1984)?

Parties

The parties to this action are James N. Fleming and W. Bedford Moore, III.

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

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The petitioner James N. Fleming respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of Virginia entered in this proceeding on January 24, 1986, and the decisions and orders on which that 1986 judgment was based.[1]

OPINIONS BELOW

This action has been the subject of three separate trial court proceedings and appeals, each of which is described below.

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[1] The opinion of January 24, 1986, finally resolving this case was the last of a series of Virginia Supreme Court orders and decisions dating from 1982. The questions presented by this petition encompass issues that were addressed in those earlier interlocutory orders and opinions.

Following the first jury trial in this action, the Virginia Circuit Court entered on April 28, 1978, an unpublished Final Judgment Order, which is set out at pp. 1-9 of the Appendix. The decision of the Virginia Supreme Court reversing that Order and remanding for a new trial was issued on March 6, 1981; that opinion is reported at 221 Va. 884, 275 S.E.2d 632 (1981), and is set out at pp. 10-32 of the Appendix.

On June 3, 1983, after a second jury trial, the Circuit Court issued an unpublished Final Judgment Order (App. 33-39). On June 8, 1984, the Virginia Supreme Court issued an unpublished order granting petitioner leave to appeal to that court, but limiting the issues which would be considered on appeal. (App. 50-53). The February 1, 1985 decision of the Virginia Supreme Court in that appeal,

sustaining the finding of liability but directing a remittitur, is reported at 325 S.E.2d 713, ___ Va. ___ (1985). (App. 56-114).

Following a hearing on the amount of the remittitur the Circuit Court, in an unpublished Final Judgment Order of May 13, 1985, fixed the amount of the remittitur. (App. 122-125). The Virginia Supreme Court on January 24, 1986, refused the petition for appeal (App. 127-128), and on March 7, 1986, denied a petition for rehearing (App. 129-130); neither of these orders is officially reported.

JURISDICTION

The order of the Virginia Supreme Court refusing the petition for appeal was entered on January 24, 1986. A timely petition for rehearing was denied on March 7, 1986. On May 27, 1986, the Chief Justice granted an order extending the

time for filing this petition until July 5, 1986. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides in pertinent part:

> Congress shall make no law ... abridging the freedom of speech, or of the press....

Section 1 of the Fourteenth Amendment provides in pertinent part:

> [N]or shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

This litigation arises out of a bitter public controversy that occurred in Albemarle County, Virginia, in the mid

1970's. The dispute was triggered by a proposal by petitioner, a black developer, to build a subdivision of low and moderate income homes, a development which he expressly announced would be open to and affordable by blacks as well as whites. Other subdivisions proposed by white developers had been approved in the county. Local officials and residents tenaciously opposed and ultimately succeeded in preventing construction of petitioner's proposed moderately priced development.

The protracted and divisive dispute that surrounded this project was permeated by charges and counter charges of racism. In January, 1975, in the face of escalating opposition to his proposed project, petitioner sent to the county Board of Supervisors a letter complaining that his project had been treated differently than

previous projects, and asserting that that differing treatment was a result of petitioner's race and the race of the blacks who might live in the proposed development. (Tr. 143-45). A local newspaper in turn denounced petitioner, asserting that his letter to the Board of Supervisors was itself "neatly camouflaged racism" (DX 8).

Petitioner's initial proposal was disapproved by the county Board of Supervisors in January, 1975. In March, 1975, petitioner filed a civil action in the United States District Court alleging that his proposal had been rejected as a result of racial discrimination.[2] While this federal action was pending, petitioner submitted a second, somewhat modified proposal to county authorities,

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[2] Fleming v. Albemarle County, Civil Action No. 75-11 (C) (W.D. Va.).

but it too was rejected. The federal action was tried in April, 1976. The testimony at the federal trial revealed direct evidence of racial motivation on the part of the county officials who had disapproved the proposed development, which was to have been located near a county reservoir. In private meetings those local officials had given the following explanation of their reasons for disapproving the project:

> "[C]an you imagine two or three hundred niggers out there on the reservoir on truck inner tubes."
>
> "Nobody around here wants a bunch of niggers shitting in the drinking water."[3]

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[3] Id., transcript of April 21, 1976, pp. 17, 171. There was no testimony at this federal trial that respondent was present when these remarks were made.

In the wake of this testimony, the district judge announced that he was convinced that the disapproval of the project was the result of "hanky-panky," and urged the defendant officials to settle the litigation.[4]

On April 26, 1976, the county officials agreed to a settlement providing for the rezoning petitioner had sought for his project. Immediately afterward, however, the chairman of the Board of Supervisors announced a moratorium on any construction in the area (Tr. 516), and several organizations intervened in the federal action seeking to overturn the settlement. (See n. 4, supra) This pattern of resistance to the proposed

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[4] See Fleming v. Citizens for Albemarle, Inc., 577 F.2d 236, 238 (4th Cir. 1978), cert. denied, 439 U.S. 1071 (1979).

development continued for several years until petitioner eventually abandoned the project and sold the land to the Nature Conservancy for use as a public park.

Respondent Bedford Moore, the plaintiff in this libel action, was characterized by his attorney as "a leader of the opposition" to the proposed construction (Tr. 289), and was described by the director of the county Planning Commission as "one of the principal antagonists" of the project. (Tr. 442). Moore was a prominent local resident and the owner of a 100 acre estate abutting the site of the proposed development. Moore personally spoke in opposition to the development at meetings of the Planning Commission and Board of Supervisors,[5] and an attorney representing Moore

[5] Tr. 79, 142, 143, 264.

spoke for him at other official meetings. (Tr. 264, 333). Moore also discussed the project with the staff of the Planning Commission and with a member of the Board of Supervisors. (Tr.110, 509, 512). Following the April 26, 1976, consent agreement, Moore was among those who contacted the attorney who intervened to overturn the agreement, and Moore and his wife were members, respectively, of the two organizations on behalf of which intervention was successfully sought. (Tr. 106, 287-88). Because the Board of Supervisors regarded Moore as one of the principal opponents of the project, the Board on several occasions requested that Moore meet with petitioner to attempt to reach an agreement regarding aspects of the disputed project. (Tr. 106, 118). These negotiations, however, ultimately proved unsuccessful.

The particular event that triggered the instant litigation occurred in January, 1976. On January 14, 1976, the Board of Supervisors voted to impose a moratorium on construction in the area at issue, thus effectively rejecting petitioner's then pending proposal. Two days later petitioner published in a local newspaper a paid advertisement denouncing the opponents of the project. (App. 192-194) . Most of the advertisement was directed at unnamed "greedy people" whose attitude was "I've got mine -- too bad about you." Petitioner argued that the proposed project would "provide housing and pleasant surroundings for working people", and that it was being resisted by "no-growth people" who already were fortunate enough to own homes. The advertisement specifically referred to respondent Moore as one of those "who

wants to deprive working people" of the opportunity to live in decent housing, and asserted that Moore "does not want any black people within ... sight" of his home. The advertisement was headed "Racism".

In January, 1977, respondent Moore commenced this action in Virginia Circuit Court, claiming that the 1976 advertisement was libelous. In 1978 an all-white jury agreed and awarded respondent $10,000 in actual damages and $100,000 in punitive damages. On appeal the Virginia Supreme court held that the trial judge had erred in ruling that the advertisement was defamatory per se, and remanded for a new trial. (App.10-29). The majority opinion did not discuss whether the advertisement might constitute a statement of opinion that was constitutionally protected from attack in a libel action. Justice Harrison

dissented, arguing that the substance of the advertisement was the sort of hyperbole that could not constitute libel.[6] Justice Harrison also expressed the view that the jury award of $110,000 was so large as to be "shocking." (App. 30).

On remand petitioner moved to dismiss this action on the ground that the disputed advertisement was a constitutionally protected expression of opinion. The trial judge refused to decide whether the advertisement was constitutionally

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[6] "I attach little significance to the word 'racism' which heads the advertisement. The words 'racism' and 'racist' are bandied about in our society with complete abandon.... Indeed, it would not be difficult to find a newspaper which contains a complaint by one party against another for some action allegedly grounded in 'racism', or 'reverse racism'..... The language of the market place is not always restrained, reasonable, or temperate.... [W]e should not allow the publication here to be the predicate of an action for libel...." (App. 30-32).

protected. Although the 1981 state Supreme Court opinion contained no reference whatever to this issue, the trial judge construed that 1981 decision to require that the case be set for retrial, and to preclude dismissal on any constitutional ground. (App. 135-37).

At the outset of the 1982 trial, counsel for respondent Moore, over petitioner's objection, exercised his peremptory challenges to remove all blacks from the jury, as he had during the 1978 trial. The substance of the 1982 trial was largely a reprise of the contentions that were aired in the earlier public controversy. Respondent Moore insisted that he had opposed the housing development solely because of environmental and other legitimate concerns, and that he was not biased against blacks. Petitioner steadfastly maintained, as he had in 1976,

his belief that Moore and others had opposed the project for racial reasons. In reply Respondent Moore's lawyer argued to the jury that petitioner's charge of discrimination was itself a "racist hoax". (Tr. 583). Moore acknowledged that the advertisement had not caused him any financial loss whatsoever, but asserted that the charge of discrimination was an attack on his "honor". (Tr. 89, 150). The jury found for respondent, and awarded him $100,000 compensatory damages, $250,000 punitive damages and 12% interest on the punitive damages, a total of approximately $591,000.

Petitioner sought leave to appeal to the Virginia Supreme Court on a variety of issues. That court expressly declined to entertain an appeal as to most of those issues, refusing to decide whether the advertisement was a constitutionally

protected statement of opinion, or whether the deliberate use of peremptory challenges to exclude black jurors in a civil suit was unconstitutional. (App. 263-72). The Virginia Supreme Court granted leave to appeal only the amount of the verdict and the sufficiency of the evidence to support an award of punitive damages. (App. 50-53). With regard to those issues the state court held that, because petitioner lacked an "objective" basis on which to allege racial discrimination, the making of that charge necessarily involved "actual malice." The state court also concluded, however, that the amounts of actual and punitive damages awarded were excessive, and remanded the case to the trial court to set an appropriate remittitur. (App. 86-106).

On remand the Circuit Court directed the respondents to remit all but $233,333.34 of the original judgment (App. 118-26). Petitioners sought leave to appeal, arguing the verdict was still excessive, but the Virginia Supreme Court denied leave to appeal. (App. 127-8). A timely petition for rehearing was also denied. (App. 129-30).

During the pendency of this litigation in the Virginia state courts petitioner twice sought certiorari to review interlocutory decisions of the Virginia Supreme Court. The first petition, seeking review of the Virginia Supreme Court's order limiting the issues to be considered in the 1985 appeal, was denied on October 29, 1984. 83 L.Ed.2d 302 (No. 84-382). Respondent expressly argued that

that petition was premature.[7] Following the 1985 decision remanding the case for a remittitur hearing, petitioner again sought certiorari. No. 84-1740. That petition was denied on June 24, 1985. 87 L.Ed.2d 643.

MANNER IN WHICH THE FEDERAL QUESTIONS WERE RAISED BELOW

In a motion to dismiss argued prior to the 1982 trial, petitioner asserted that the advertisement was an expression of opinion "protected by the First Amendment," (App. 196, 134-35, 137-39), an argument reiterated in a similar motion argued during the trial. (App.242-44) Petitioner's 1983 Petition for Appeal to the Virginia Supreme Court asked that

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[7] Brief in Opposition, No. 84-382, pp. 1-7.

court to decide the same issue (App. 263, 265), as did petitioner's January 30, 1986 petition for rehearing. (App. 280).

Petitioner objected at the 1982 trial to respondent's use of peremptory challenges to ban all blacks from the jury (App. 149-50), and in a post-trial motion argued that the manner in which those challenges had been used violated his federal constitutional rights. (App. 190, 225-32). In his 1983 petition for appeal petitioner asked the Virginia Supreme Court to decide whether the use of those challenges had violated the Fifth and Fourteenth Amendments. (App. 265, 267).

Following the 1982 jury verdict, petitioner moved to set aside the verdict on the ground that it was so excessive as to be unconstitutional under Gertz v. Robert Welch, Inc., 418 U.S. 323 (1974) (App. 215-16, 218-20, 250-57). Peti-

tioner's 1983 petition for appeal and 1984 brief in the Virginia Supreme Court reiterated that same constitutional contention. (App. 269-71, 273-76). Following the remittitur order of the circuit court, petitioner's 1985 petition for appeal argued that the modified verdict was still inconsistent with Gertz. (Petition for Appeal, No. 85-0622, pp. 15, 17).

During the 1982 trial petitioner repeatedly argued that respondent Moore was a public figure within the meaning of New York Times v. Sullivan, 376 U.S. 254 (1964), that respondent had failed to demonstrate the existence of the requisite malice, and that the action was therefore barred by the First Amendment. (App. 233-50. Subsequently petitioner moved to set aside the verdict on the same ground

(App.188-89), and asked the Virginia Supreme Court to review that federal constitutional question. (App. 264-67).

REASONS FOR GRANTING THE WRIT

(1) Certiorari Should Be Granted To Resolve A Conflict Among the Lower Courts Regarding the Scope of Constitutionally Protected "Opinion" Under Gertz v. Robert Welch, Inc., 418 U.S. 373 (1974)

In 1974 this Court held in Gertz v. Robert Welch, Inc., 418 U.S. 323 (1974), that expressions of opinion enjoy absolute protection under the First Amendment.[8] Since that time the twelve circuit courts of appeals, as well as courts in at least 34 states,[9] have reached widely divergent

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[8] "Under the First Amendment there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas." 418 U.S. at 339-40.

[9] A complete list of the lower court cases since 1974 discussing the scope of the

conclusions regarding what types of statements are constitutionally protected expressions of "opinion." In 1984-85 alone there were some 40 reported lower court decisions on this issue.[10] Recognizing the importance of this issue, and the conflicting interpretations of Gertz that have emerged among the lower courts, six members of this Court have already voted on various occasions to grant certiorari to clarify the scope of the constitutional protection afforded to expressions of opinion.[11]

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constitutional protection afforded to opinions is set forth in Table A printed as an appendix to this brief.

[10] See Table A, infra.

[11] Lorain Journal Co. v. Milkovich, No. 84-1731, cert. denied, 88 L.Ed.2d 305 (Nov. 4, 1985) (Brennan J. and Marshall, J., dissenting from denial of certiorari) (The third question presented by the petition read, "Is First Amendment privilege covering expressions of opinion abridged where federal and state courts in Ohio are bound by conflicting precedents

The nature of the opinion privilege recognized by Gertz is widely regarded as one of the most thoroughly confused issues of contemporary constitutional law. The lower courts have described the case law since Gertz[12] as "nebulous",[13] "murky",[14] "uncertain" "unpredictable",[15] an "area of

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in determining the scope of protected opinion?"); Ollman v. Evans, No. 84-1524, 86 L.Ed. 278 (May 28, 1985) (Rehnquist, J., and Burger, C.J., dissenting from denial of certiorari); Miskovsky v. Oklahoma Publishing Co., 459 U.S. 923 (1982) (Rehnquist, J. and White, J., dissenting from denial of certiorari); Phoenix Newspapers v.Church, 425 U.S. 908 (1976)(Burger, C.J. and Blackmun, J., dissenting from denial of certiorari).

12 Goodrich v. Waterbury Republican-American, 448 A.2d 1317, 1221, 188 Conn. 107 (1982).

13 Mr. Chow of New York v. Ste. Jour Azur S.A., 759 F.2d 219, 224 (2d Cir. 1985).

14 Mashburn v. Collin, 355 So.2d 879, 885 (La. 1977).

15 Havalunch v. Mazza, 294 S.E.2d 70, 73 (W. Va. 1981).

total confusion",[16] and "difficult" or "nearly impossible" to understand and apply.[17] Commentators have been even more harsh in their description of the widely divergent lower court decisions, characterizing the varying standards applied by those courts as "contradictory and confused,"[18] "an invitation to error,

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16 Janklow v. Newsweek, 12 Media L. Rep. 1961, 1967 (8th Cir. 1986) (en banc)(Bowman, J., dissenting) ("Beauty is in the eye of the beholder, and it would appear that the result to be obtained ... is in the eye of the judge").

17 Bose Corp. v. Consumers Union, 692 F.2d 189, 194 (1st Cir. 1982), aff'd 80 L.Ed.2d 502 (1984); Edwards v. National Audubon Society, 556 F.2d 113, 121 n.5 (2d Cir. 1977); Lauderback v. American Broadcasting System, 741 F.2d 193, 195 (8th Cir. 1984); Renwick v. News and Observer Pub. Co., 304 S.E.2d 593, 605 (N.C. App. 1983), rev'd on other grounds, 312 S.E.2d 405, 310 N.C. 312 (1984).

18 Note, The Fact-Opinion Distinction in First Amendment Libel Law: The Need for a Bright-Line Rule, 72 Geo. L.J., 1817, 1853 (1984); see also id. at 1818 ("variety of [lower court] approaches"; "no consensus" on standards; "uncertainty").

uncertainty and inconsistency",[19] "unsatisfactory and unreliable",[20] and marked by "judicial confusion".[21] The lower courts have repeatedly recognized that they are applying conflicting standards,[22] and have

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19 Note, Fact and Opinion After Gertz v. Robert Welch, Inc: The Evolution of a Privilege, 34 Rutgers L. Rev. 81, 126 (1981).

20 W. Prosser, Handbook of Torts 820 (4th ed. 1971).

21 Carman, "Hutchinson v. Proxmire and the Neglected Fair Comment Defense: An Alternative to 'Actual Malice'", 30 De Paul L. Rev. 1, 13 (1980).

22 Ollman v. Evans, 750 F.2d 970, 978(D.C. Cir. 1984) (en banc) ("courts are divided in their methods of distinguishing between assertions of fact and expressions of opinion"); Burns v. McGraw-Hill Broadcasting Co, Inc., 659 P.2d 1351, 1359 (Colo. 1983)("courts have not uniformly applied the distinction between facts and opinions"); Anton v. St. Louis Suburban Newspapers, 598 S.W.2d 493, 498 (Mo. App. 1980)("courts ... differ" on the scope of the Gertz privilege); Henry v. Halliburton, 690 S.W.2d 775, 787 (Mo. 1985)(en banc) ("courts are divided in their methods of distinguishing between assertions of fact and expressions of opinion...").

bemoaned the lack of further guidance from this Court as to the difference between a statement of opinion and a statement of fact.[23]

The nature of this conflict among the lower court decisions is far more complex than the conflicts usually deemed sufficient to warrant a grant of certiorari. There are more than a dozen different standards being utilized by the lower courts to distinguish between statements of fact and opinion; in recent years the number of constitutional standards has

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[23] Ollman v. Evans, 750 F.2d at 975 (Supreme Court has "provided little guidance"); Keller v. Miami Herald Pub. Co., 778 F.2d 711, 715 n.11 (11th Cir. 1985)(Supreme Court "has provided little guidance in distinguishing between statements of fact and opinion"); Goodrich v. Waterbury Republican-American, 448 A.2d at 1324, (Supreme Court has not "fully articulated" "[t]he precise contours" of the opinion doctrine); Renwick v. News and Observer Pub. Co., 304 S.E.2d at 605 (Supreme Court decisions "offer little direct guidance")

increased as the state and circuit courts fashioned new hybrid rules from criteria articulated in earlier opinions. The particular standard that will be applied by a given court at times varies unpredictably from case to case,[24] leaving speakers, the media and litigants with little guidance as to what statements are protected by Gertz in a given jurisdiction. Some decisions announce several different standards, with no explanation of which standard would control when they

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[24] The decisions in the second circuit have utilized such varying criteria. See Buckley v. Littell, 539 F.2d 882, 893 (2d Cir. 1976)(statements are expressions of opinion if the meaning of the words used is characterized by "tremendous imprecision"); Hotchner v. Castillo-Puche, 551 F.2d 910, 913 (2d Cir. 1977)(statement is one of opinion if it cannot be proved true or false); Davis v. Ross, 754 F.2d 80, 86 (2d Cir. 1985)(statement is opinion if it does not imply the existence of unstated defamatory factual premises); Mr. Chow of New York v. Ste. Jour Azur, S.A., 759 F.2d 219, 226 (2d Cir. 1985)(applying the Ollman standards).

yield different results.[25] For these reasons the following assessment of which rules now prevail in which circuits and states involves an unavoidable degree of approximation.

The first, third, sixth, and tenth circuits[26] apply the definition of an opinion set forth in section 566 of the Restatement Torts (Second) (1976).[27] Under

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[25] See, e.g., Burns v. McGraw-Hill Broadcasting, 659 P.2d 1351, 1358 (standards referred to include whether meaning of statement is speculative), 1358 (Restatement), 1360 (Information Control standards) (Colo. 1983).

[26] Bose Corp. v. Consumers Union, 692 F.2d 194; Redco Corporation v. CBS, 11 Media L. Rep. 1861, 1862 (3d Cir. 1985); Orr v. Argus-Press Co., 586 F.2d 1108, 1114-15 (6th Cir. 1978); Rinsley v. Brandt, 700 F.2d 1304, 1309 (10th Cir. 1983).

[27] "A defamatory communication may consist of a statement in the form of an opinion, but a statement of this nature is actionable only if it implies the allegation of undisclosed defamatory facts as the basis of the opinion". Restatement (Second) of Torts, § 566 (1976).

the Restatement a speaker has an absolute privilege to state what conclusion he has drawn based on disclosed or assumed facts, so long as he or she does not imply the existence of other unstated facts which are false and defamatory. Utilization of the Restatement standards has also been endorsed by approximately seventeen states.[28] These jurisdictions are sharply divided, however, regarding what the Restatement means. Some cases hold that a statement of opinion without an accompanying disclosure of its factual premises is defamatory per se.[29] A second line of

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[28] Restatement Appendix, v. 4, pp. 364-70 (1981); Cumulative Pocket Part, v. 4, pp. 271-84 (1984); Cumulative Annual Supplement, v. 4, pp. 308-325 (1985).

[29] See, e.g., Burns v. McGraw Hill Broadcasting Co., 659 P.2d 1351, 1359-60 (Colo. 1983)(citing cases); Silsdorf v. Levine, 59 N.Y. 2d 8, 13 (1983)("The immunity afforded the expression of opinion obtains only when the facts supporting the opinion are set forth.")

decisions holds that the mere absence of such stated or assumed facts does not remove the constitutional protection unless the speaker or writer goes further and affirmatively implies that he or she knows some unstated defamatory fact.[30]

The Restatement standard, whatever its meaning may be, has been expressly rejected in the second and District of Columbia Circuits.[31] Those courts[32] now apply the constitutional test formulated by Judge Starr in Ollman v. Evans, 750 F.2d 970 (1984)(en banc), cert. denied 86 L.Ed. 2d 278 (1985). The Ollman standard

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[30] See, e.g., From v. Tallahassee Democrat, Inc., 400 So.2d 52, 57 (Fla. App. 1981) (opinion not accompanied by statement of facts still constitutionally protected); Pritsker v. Brudnoy, 452 N.E.2d 227, 229 (Mass. 1983)(same).

[31] Cianci v. New Times Publishing Co., 639 F.2d 54, 64-65 (2d Cir. 1980).

[32] See Mr. Chow of New York v. Ste. Jour Azur, S.A., 759 F.2d at 226.

relies on four distinct criteria: the language of the alleged libel, the extent to which the statement is verifiable, and the social and linguistic context in which the statement was made. 750 F.2d at 979-83. The eighth circuit utilizes a multi-part test that incorporates not only the four criteria of the Ollman majority opinion but also certain additional criteria proposed by Judge Bork's concurring opinion.[33]

In Massachusetts, Florida, Colorado, New Hampshire[34] and the eleventh circuit

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[33] Janklow v. Newsweek, 12 Media L.Rep. at 1962, 1263, 1264 and n. 5.

[34] Fleming v. Benzaquin, 454 N.E.2d 95, 100, 390 Mass. 175 (1983); Smith v. Taylor County Publishing Co., 443 So.2d 1042, 1047 (Fla. App. 1 Dist. 1983); Hay v. Independent Newspapers, Inc., 450 So.2d 293, 295 (Fla. App. 2 Dist. 1984); Burns v. McGraw-Hill Broadcasting Co., Inc., 659 P.2d 1351, 1360 (Colo. 1983); Nash v. Keene Publishing Corp., 10 Media L. Rep. 2281, 2282 (N.H. Supr. Ct. 1984); Keller v. Miami Herald Publishing Co., 778 F.2d 711, 717 (11th Cir. 1985).

courts follow the three part standard established by the ninth circuit in Information Control Corp. v. Genesis Computer Corp. , 611 F.2d 781, 783-84 (9th Cir. 1980). The factors deemed of controlling importance in these jurisdictions are the language of the statement, the facts surrounding the publication, and whether the statement was made in the course of a public dispute. Unlike the Ollman rule, however, verifiabilty is not a consideration. 611 F.2d at 784. Washington and New Mexico courts consider verifiability, the entire language of the statement, and the likely understanding of the audience, but attach no specific significance to the type of controversy in which the statement occurred.[35]

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[35] Benjamin v. Cowles Publishing, 10 Media L. Rep. 1970, 1973 (Wash. App. 1984); Marchiondo v. Brown, 649 P.2d 462, 469, 98 N.M. 394 (1982).

In California the consideration of overriding importance is whether a disputed remark was made in the context of a public, political or labor dispute, or any similar heated controversy; the courts of that state assume that the audience hearing such remarks would not ordinarily treat them as entirely factual, but could "anticipate ... the ... use of epithets, fiery rhetoric or hyperbole".[36] Thus in California "[s]tatements occurring in the course of a public debate will usually be accorded the status of opinion."[37] The eighth circuit adheres to a similar rule regarding individuals who speak out on

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[36] Gregory v. McDonnell Douglas Corp., 17 C.3d 596, 601, 131 Cal. Rptr. 641, 552 P.2d 425 (1976).

[37] Blackhawk Corp. v. Ewing, 94 Cal. App. 3d 640, 643, 156 Cal. Rptr. 581 (1979). (Emphasis added).

controversial issues, holding that "those who participate willingly in public debate 'must accept a degree of derogation that others need not.'"[38] In Connecticut "mixed" statements combining assertions of both fact and opinion are constitutionally protected only if "about matters of public interest or concern."[39] Statements made in the course of a public controversy are more likely to be deemed "opinion" in jurisdictions applying the Ollman or Information Control standards, but such a context is of no apparent relevance under the Restatement. Louisiana courts apparently construe Gertz to protect only opinions about "matters of

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[38] Janklow v. Newsweek, 12 Media L.Rep. at 1964 n.5.

[39] Goodrich v. Waterbury Republican-American, 448 A.2d 1317, 1325 (1982).

public concern"[40] and "persons taking a public position on a matter of public concern,"[41] but the eighth and ninth circuits have expressly rejected the limitation accepted in Louisiana.[42]

Courts in Ohio, Tennessee and Louisiana[43] hold that statements of opinion are constitutionally protected only if those statements are made without malice. In Maryland whether or not an opinion is constitutionally protected also turns to

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40 Mashburn v. Collin, 355 So.2d 879, 882, 885, 889 (La. 1977); Economy Carpets v. Better Business Bureau, 361 So.2d 234, 240, 242 (La. 1978).

41 Mashburn v. Collin, 355 So.2d at 882.

42 Lewis v. Time, Inc., 710 F.2d 549, 553 (9th Cir. 1983); Janklow v. Newsweek, 12 Media L.Rep. at 1962.

43 Greer v. Columbus Monthly, 8 Media L. Rep. 2129, 2133 (Ohio Ct. App. 1982); Stones River Motors, Inc. v. Mid-South Publishing Co., 651 S.W.2d 713, 723 (Tenn. App. 1983); Mashburn v. Collin, 355 So.2d at 891.

some degree on the good faith of author.[44] The state courts of New York and Missouri, on the other hand, hold that expressions of opinion are constitutionally privileged "even if [the opinions are] falsely and insincerely held."[45]

The second circuit and state court decisions in Colorado, Massachusetts and New York have held that any assertion that cannot be proved true or false is necessarily a privileged expression of opinion.[46] In light of the difficulty of

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[44] Kapiloff v. Dunn, 340 A.2d 251, 262-63 (Md. Ct. Sp. App. 1975).

[45] Anton v. St. Louis Newspapers, Inc., 598 S.W.2d 493, 499 (Mo. App. 1980); Rinaldi v. Holt, Rinehart, 42 N.Y.2d 369, 381. (1977).

[46] Hotchner v. Castillo-Poche, 551 F.2d 910, 913 (2d Cir. 1977); Burns v. Denver Post, Inc., 606 P.2d 1310, 1311 (Colo. App. 1980); National Association of Government Employees v. Central Broadcasting Corp., 396 N.E. 996, 1002 (Mass. 1979); Chalpin v. Amordian Press, 12 Media L. Rep. 1422, 1424 (N.Y. Sup. Ct. 1985); New Deal Restaurant v. WPIX, 11 Media L. Rep. 1965,

ascertaining with any certainty the purposes that may lie behind an individual's actions, decisions in the third and ninth circuits as well as Colorado and Arizona indicate that accusations of improper motives must always be treated as statements of opinion.[47] California and New York follow the same rule for somewhat different reasons.[48]

1966 (N. Y. Sup. Ct. 1985).

[47] Janklow v. Newsweek, 12 Media L. Rep. at 1964 (governor allegedly motivated by personal animus toward criminal defendant); Pierce v. Capital Cities Communications, Inc., 576 F.2d 494, 503-04 (3d Cir. 1978) (mayor allegedly motivated by conflict of interest); MacConnell v. Mitten, 638 P.2d 689, 692 (Ariz. 1981) (reason employer dismissed plaintiff); Burns v. Denver Post Co., 606 P.2d 1310, 1311 (Ariz. 1980)("There is no way Burns' opinion as to his ex-wife's motivation in divorcing him can be proved true or false").

[48] Good Government Group of Seal Beach v. Superior Court, 586 P.2d 572, 576, 150 Cal. Rptr. 258 (1978)(attacks on the "subjective motives of competitors . . . are merely statements of opinion"); Rinaldi v. Holt, Rinehart, 42 N.Y.2d at

These widely varying standards have led to conflicting decisions regarding the constitutional status of particular statements. An accusation of criminal conduct may be a constitutionally protected expression of opinion in Florida and the sixth and ninth circuits,[49] but it is always actionable in New York and the second and eighth circuits.[50] Calling someone a liar is an opinion in Missouri and California,[51] but an assertion of fact

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382 ("inquiry into motivation is within the scope of absolute privilege").

49 Hay v. Independent Newspapers, 450 So.2d 293 (Fla. App. 2 Dist. 1984); Lewis v. Time, Inc., 710 F.2d 549 (9th Cir. 1983); Orr v. Argus-Press Co., 586 F.2d 1108 (6th Cir. 1978).

50 Silsdorf v. Levine, 59 N.Y.2d 8 (1983); Cianci v. New Times Publishing Co., 639 F.2d 54, 63-64 (2d Cir. 1980); Lauderback v. American Broadcasting Companies, 741 F.2d 193, 197 (8th Cir. 1984).

51 Iverson v. Crow, 639 S.W.2d 118, 119-20 (Mo. App. 1982); Block v. Desert Sun, 6 Media L. Rep. 1367, 1368 (Cal. App. 1980).

in Illinois and Ohio.[52] The second circuit holds that calling someone a "liar" is an expression of opinion, but that calling the same person a "paid liar" is a factual statement.[53] An accusation that an individual is "dishonest" is a factual assertion in Texas,[54] but six other states as well as four circuits treat as constitutionally protected opinion assertions that an individual is "unscrupulous", "shady," "sleazy", or "unethical", or has engaged in "fraud", "deceit", or a "ripoff".[55] The

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52 Costello v. Capital Cities Media, 9 Media L. Rep. 1434, 1436-37 (Ill. App. 1982); Milkovich v. News Herald, 473 N.E.2d 1191, 15 Ohio St. 3d 292 (1984).

53 Edwards v. National Audubon Society, 556 F.2d 113, 121-22 (2d Cir. 1977).

54 First Bank of Corpus Christi v. Ake, 606 S.W.2d 696, 700 (Tex. Civ. App. 1980).

55 Church of Scientology v. Cazares, 638 F.2d 1272, 1289 (5th Cir. 1981) ("ripoff"); Orr v. Argus-Press Co., 586 F.2d at 1110 ("fraud", "swindle"); Lauderback v. American Broadcasting Companies, 741 F.2d

constitution protects criticism of the competence of a worker or employee in West Virginia, Maine, and the seventh circuit,[56] but not in Oregon, Louisiana, or the second circuit.[57] Calling a television

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at 195 ("rotten," "unethical"); Lewis v. Time Incorporated, 710 F.2d 549, 551 (9th Cir. 1983) ("shady"); Okun v. Superior Court, 29 Cal.3d 442, 451, 175 Cal. Rptr. 157, 629 P.2d 1369 ((1981)("wheeler-dealer"); Stones River Motors, Inc. v. Mid-South Pub. Co., 651 S.W.2d 713, 718 (Tenn. App. 1983) ("rip-off"); Foote v. Sarafyan, 432 So.2d 877, 879-809 (La. App. 4 Cir. 1982) ("fraud"; "deceit"); Anton v. St. Louis Suburan Newspapers, 598 S.W.2d 493, 495 (Mo. App. 1980) ("sleazy"); Henry v. Halliburton, 690 S.W.2d 775, 789 (Mo. banc 1985) ("fraud"); Chalpin v. Amordian Press, 12 Media L. Rep. 1422 (N.Y. Sup. Ct. 1985) ("unbelievably unscrupulous").

[56] Miller v. Charleston Gazette, 9 Media L. Rep. 2540, 2545 (Cir. Ct. W. Va. 1983) ("second-rater"); Caron v. Bangor Publishing Co., 470 A.2d 782, 783 (Me. 1984) (police officer not "effective"); Spelson v. CBS, 11 Media L. Rep. 1900, 1901 (7th Cir. 1985) (chiropracter a "medical quac[k]").

[57] Bock v. Zittenfield, 66 Or. App. 97, 101, 672 P.2d 1237 (1983) (statement by former employer that "I wouldn't hire him as a supervisor"); McHale v. Lake Charles American Press, 6 Media L. Rep. 2478, 2487

journalist the "worst" sportscaster in Boston[58] is constitutionally protected in Massachusetts, but asserting that a print journalist is the "worst" writer at Sports Illustrated is unprotected and libelous in New York.[59]

The Virginia courts in the instant case did not merely misapply Gertz; they deliberately and repeatedly refused to apply Gertz at all. The 1982 trial court expressly declined to decide if the disputed advertisement was a constitutionally expression of opinion, and the Virginia Supreme Court refused in both

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(La. App. 1980) (investment advisor competence such that no bond buyer would reply on his opinion); Davis v. Ross, 754 F.2d 80, 81 (2d Cir. 1985) (statement by former employer that she did "not recommend" plaintiff).

58 Myers v. Boston Magazine Co., Inc., 403 N.E.2d 376 (1980).

59 Maule v. N.Y.M. Corporation, 429 N.Y.S.2d 891, 76 A.D. 58 (1980).

1983 and 1986 even to consider that issue. (See 15-16, supra). The result in this case is clearly inconsistent with the rules in California, New York, Colorado, Arizona and the third and ninth circuits that statements about the motives of others are necessarily matters of opinion. The advertisement would doubtless be considered an opinion as well in at least some of the jurisdictions applying the various multi-part and Restatement standards. The Virginia courts, however, simply refused to address the central First Amendment issue at the heart of this litigation.

Far more is at stake here than a complex conflict among the lower courts regarding an important issue of constitutional law. The framers of the Fourteenth Amendment were determined to extend the restrictions of the First Amendment to the

states because, in the years after the Civil War, as had been true in the antebellum period, those who criticized the treatment of blacks were free to voice those objections in the north, but risked official retaliation or punishment if they made such remarks in southern states. J. tenBroek, Equal Under Law (1969). The decision in this case recreates precisely the type of problem with which Congressmen Bingham and other members of the thirty-ninth Congress were concerned. Had petitioner chosen to denounce respondent in another state, he would have faced no legal difficulties. Petitioner would have enjoyed absolute constitutional protection if he had called respondent a Nazi, a facist or a Stalinist in New York, a [60]

[60] New Testament Missionary Fellowship v. Dutton, 9 Media L. Rep. 1174, 1175 (N.Y. Sup. Ct. 1982) ("facist"); Holy Spirit Ass'n v. Sequoia Elsevier Publishing Co., 426 A.D.2d 759, 760 (1980) ("Nazi-style

Marxist in the District of Columbia,[61] a hood or a thug in Michigan,[62] the scum of the earth in New Hampshire,[63] or a sadist, a nut, a barbarian, a lunkhead or a meatball in Massachusetts.[64] But when petitioner chose instead to assert in Virginia that respondent had taken a single action that was racially motivated, petitioner became liable for an enormous punitive award exacted under color of state law. The injustice of that result is exacerbated by the fact that, in 1984,

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anti-Semitism"); Brower v. New Republic Inc., 7 Media L. Rep. 1605 (N.Y. Sup. Ct. 1981) ("old Stalinist").

61 Ollman v. Evans, supra.

62 Lins v. Evening News, 9 Media L. Rep. 2380 (Mich. Ct. App. 1983).

63 Pease v. Telegraph Publishing Co., 426 A.2d 463 (N.H. 1981).

64 Fleming v. Benzaquin, 454 N.E.2d 95, 100 (Mass. 1983); Medeiros v. Northeast Publishing, 8 Media L. Rep. 2500 (Mass. Super. Ct. 1982).

the same year that the Supreme Court of Virginia refused even to consider petitioner's contention that an allegation of "racism" is constitutionally protected, the Supreme Court of North Carolina held that the laws of that state did not permit a black man to sue for libel because he had been publicly accused of "reverse racism."[65]

The implications of the decision below are particularly grave because, in sustaining an award of punitive damages, the Virginia Supreme Court held that the existence of malice had been proved by the fact that petitioner made the statement in

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[65] Renwick v. News Observer Publishing Co., 312 S.E.2d 405, 407 (N.C. 1984). The newspaper editorial at issue also denounced Renwick as an "extremist", and suggested that he had lied about the operations of the minority admissions program he had supervised at the University of North Carolina; neither of these assertions was held actionable.

question in the absence of any "objective" proof of racism. (App.102). As this Court itself has noted, such direct evidence of discrimination is only rarely present in discrimination cases. U.S. Postal Service v. Aikens, 460 U.S. 71, 76 (1983). Thus under the decision in this case, almost any allegation of racism in Virginia will be deemed malicious as a matter of law, a holding that not only permits an award of punitive damages, but allows a successful libel action on behalf of a public official. In Virginia today any citizen or civil rights organization that criticizes a judge, legislator or other public figure as biased runs a serious risk of being mulct in damages by a hostile all-white jury.

II. The Award of $233,333 Is So Excessive as to Violate the First Amendment

Twelve years ago this Court warned that, because of the lack of any legal standards governing libel awards, juries "remain free to use their discretion selectively to punish expressions of unpopular views." Gertz v. Welch, 418 U.S. at 350. In light of that danger, the majority in Gertz concluded that there were constitutional limitations on the amount of compensatory and punitive damages that might be awarded in a libel case. 418 U.S. at 349-50. Justice White urged that "immoderate verdicts" should be corrected under "the salutary New York Times policy of case-by-case 'independent examination of the whole record'". 418 U.S. at 397-98.

In the instant case the largest officially reported libel verdict in Virginia history has been imposed by a jury upon a defendant who dared to voice a view that for centuries has been of unique unpopularity in that region. No one could seriously suggest that this has occurred by coincidence. For generations many whites have reacted with anger, outrage and even violence to blacks who complained about racial injustices. The $233,333 judgment in this case, imposed for the expression of just such a grievance, is five times larger than any libel judgment ever previously upheld by the Virginia Supreme Court.[66] The second highest such judgment, a verdict of $55,000 per plaintiff against a union for calling a

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[66] A list of all libel verdicts appealed to that court since 1925 is set out in Table B, reproduced at the end of this petition.

strike breaker a "scab,"[67] was overturned by this Court. Letter Carriers v. Austin, 418 U.S. 264 (1974).

The excessive and extraordinary nature of the verdict in this case is particularly apparent with regard to the award of punitive damages, including interest, The 1982 jury awarded punitive damages, including interest, of $491,000, and the remittitur in this case effectively reduced the punitive award to $166,660. The largest punitive award ever previously upheld by the Virginia Supreme Court, excepting the decision in Letter Carriers, was only $999.[68] The $166,666 private fine imposed in this case for the

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[67] National Association of Letter Carriers v. Austin, 213 Va. 377 (1972).

[68] Wright v. Corfield, 146 Va. 637 (1926). The punitive award in Letter Carriers was $45,000 for each of the three plaintiffs there.

express purpose of punishing petitioner is far higher than the fines authorized by the Virginia Criminal Code for even serious criminal conduct. Under Virginia law, the maximum fine for assault, grand larceny or voluntary manslaughter is $1,000;[69] but state law places no limit whatever on the monetary sanction that can be imposed for injuring a man's "honor." In Virginia as elsewhere convicted felons and misdemeanants are regularly sentenced only to fines far smaller than the $166,666 imposed on petitioner.

The majority in Gertz expressed the hope that the danger of excessive compensatory awards would be reduced because jury discretion would "be limited by appropriate instructions". 418 U.S. at 350. But in the instant case the instruc-

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[69] Code Va. §§ 18.2-10, 18.2-35, 18.2-51, 18.2-59, 18.2-93.

tions on damages merely listed the types of psychic injuries that could be redressed, without any guidance regarding how compensation was to be measured. (Tr. 576). The result was predictably arbitrary. The jury which heard this case in 1978 concluded that the injuries sustained by respondent had a value of $10,000; four years later the second jury, on virtually the same record, fixed the amount of those very same injuries at $100,000. The ultimate damage award of $66,666 for being called a racist is several times larger than the average libel verdict sustained by the Virginia Supreme Court in cases in which the plaintiff was falsely accused of commiting a criminal offense.[70]

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[70] See Table B, infra.

Just as it was important in past cases to delineate whether an award of as little as $5,000 was based on a constitutionally sound finding of liability, St. Amant v. Thompson, 390 U.S. 727, 729 (1968), so too is it critical to determine whether even such a finding can support a $266,666 judgment in favor of a libel plaintiff who admittedly suffered not one dollar of financial injury. Any damage award in a libel case carries with it a risk of chilling freedom of speech, but judicial approval of crushing awards such as that in this case is likely to have a far greater deterrent effect. Certiorari should be granted to overturn the verdict below, and to establish for the fixing and review of future verdicts constitutional standards that will prevent the sort of abuse that occurred here.

III. Certiorari Should Be Granted to Decide Whether Batson v. Kentucky Applies to Civil Litigation Regarding Racial Issues.

At the outset of the 1982 trial in this case, after counsel for respondent used his peremptory challenges to remove all blacks from the jury, petitioner unsuccessfully moved to quash the resulting jury panel on the grounds that it was constituted in an unconstitutional manner. (App. 147-51). When petitioner urged the Virginia Supreme Court to review that issue, counsel for respondent argued that his action was expressly sanctioned by Swain v. Alabama, 380 U.S. 202 (1965).[71] On

[71] Brief in Opposition to Petition to Appeal, No. 83-1446, pp. 39-41. ("[T]he Supreme Court of the United States has categorically rejected this argument. Swain v. Alabama . . . . Fleming . . . submits that the trial judge should examine 'the core of the case' in order to decide whether it is necessary to assure that a black . . . be included . . . . Such an exception to the Swain ruling would place

January 7, 1984, the Virginia Supreme Court declined to consider this issue, and on March 7, 1986, that court finally denied rehearing in this case. Less than two months later this Court overruled Swain. Batson v. Kentucky, No. 84-6263 (April 30, 1986).

The question presented by this case is whether Batson should be applied to civil litigation involving sensitive racial issues. Batson itself did not squarely resolve that issue. See 90 L.Ed.2d at 82 n. 12. Although respondent's attorney was not himself a state employee, the actual order that all black veniremen stand aside was issued in this case by a state judge acting under color

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exception to the Swain ruling would place entirely too much discretion in the trial judge").

of law at the behest of respondent. See Shelley v. Kramer, 334 U.S. 1 (1948). Several lower court cases addressing this issue have concluded that the constitutional restrictions on a prosecutor's use of peremptory challenges would apply in at least some cases to the use of such challenges by a private litigant.[72]

The constitutional restrictions against racial discrimination in jury selection apply to private civil litiga-

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[72] Booker v. Jabe, 775 F.2d 762,771-72 (6th Cir. 1985) (criminal defense counsel subject to constitutional limitations); McCray v. Abrams, 581 F. Supp. 493, 499 (E.D.N.Y. 1984) (rules regarding use of peremptories in civil case substantially the same as in criminal case); Miami v. Cornett, ___ So.2d ___ (No. 81-85, Fla. D. Ct. App.) (slip opinion Jan. 29, 1985) (in racially sensitive civil case "[t]he misuse of the peremptory challenges to eliminate identifiable groups contributes to an undermining of the integrity of the justice system"; it is "the responsibility of the court to minimize that potential for abuse by imposing some reasonable limitations on the exercise of the challenge").

tion as well as to criminal cases. Thiel v. Southern Pacific Co., 328 U.S. 217 (1946). Much of the reasoning of Batson is entirely applicable to the instant case. Batson warned that "[b]y compromising the representative quality of the jury, discriminatory selection procedures make 'juries ready weapons . . . to oppress those . . . individuals who . . . are numbered among unpopular . . . minorities'". Id at 81 n. 8. These dangers were relatively mild in Batson itself, where the only racial element in the case stemmed from the race of the defendant. In the instant case that danger is far greater, not only because the opposing litigants are of different races, but because the subject matter of the litigation is one of extraordinary racial sensitivity.

A decision sustaining petitioner's objections to the jury selection procedure in this case need not extend Batson to every civil case. We ask only that the Court hold, as it did in Turner v. Murray, 90 L.Ed.2d 27 (1985), that the specific racial circumstances of this case require particular procedural safeguards. In this case, as in Hamm v. South Carolina, 409 U.S. 524 (1973), "racial issues 'were inextricably bound up with the conduct of the trial.'" Turner v. Murray, 90 L.Ed.2d at 45 (Powell, J., dissenting). In assessing the accuracy and reasonableness of petitioner's allegation of racism, white jurors would necessarily bring to their deliberations experiences and sensitivities totally different than would blacks. Although Virginia statutes provided some standards to guide the sentencing jury in Turner, the jury in

this case had virtually no such guidance in fixing the amount of compensatory damages, and none whatsoever in determining the amount of punitive damages. Thus here, as in Turner, "the range of discretion entrusted to a jury . . . [provides] a unique opportunity for racial prejudice to operate but remain undetected." 90 L.Ed.2d at 35. The Virginia Supreme Court in this case candidly acknowledged that the excessiveness of the 1982 verdict"on its face indicates prejudice or partiality". (App. 105).

IV. The Decision Below Is Inconsistent With Bose Corp. v. Consumers Union, 80 L.Ed.2d 502 (1984).

In Bose Corp. v. Consumers Union, 80 L.Ed.2d 502 (1984), this Court held that "in cases raising First Amendment issues . . . an appellate court has an obligation to 'make an independent

examination of the whole record' in order to make sure 'that the judgment does not constitute a forbidden intrusion on the field of free expression.' " 80 L.Ed.2d at 515. In the instant case there has never been any appellate review at all of many of the constitutional issues. Among the questions which the Virginia Supreme Court simply refused to decide in 1984 and 1986 were whether petitioner's statement was an absolutely privileged expression of opinion under the First Amendment, whether respondent was a public figure, whether the 1982 jury was constituted in a manner that violated the Fifth and Fourteenth Amendments, and whether the $233,333 judgment was unconstituionally excessive.[73]

[73] App. 50-53, 127-28, 263-72, 277-78.

We believe that Bose requires a state court with appellate jurisdiction over a libel case to exercise that jurisdiction and squarely resolve the federal constitutional questions raised. At the least, Bose requires this Court to scrutinize with particular care petitions in libel cases seeking review of First and Fourteenth Amendment issues which the state appellate courts simply refused to consider or resolve.

The record in this case falls far short of Bose's insistence that a libel plaintiff establish by "clear and convincing evidence" that he has met the substantive constitutional requirements of New York Times v. Sullivan and its progeny. 80 L.Ed.2d at 523, 525. Respondent was understandably regarded both by local officials and by his own attorney as one of the principal leaders of the

opposition to the disputed development that was the subject of a raging public debate in Albemarle County. Respondent spoke at some public meetings, engaged an attorney to speak at others, met with both county officials and the developers, and helped to instigate the litigation that ultimately led to the project's demise. Having chosen to play a central role in a controversy as heated and important as any political campaign or labor dispute, respondent was surely a limited purpose public figure who had "thrust [him]self to the forefront of [a] public controversy in order to influence the resolution of the issues involved in it". Time, Inc. v. Firestone, 424 U.S. 448, 453 (1976).

The record in this case is clearly insufficient to establish that petitioner's statement was made with malice. Not even the Virginia Supreme Court

suggested that petitioner knew or could have known that his statement was false; only respondent will ever know with certainty what motive prompted him to campaign against the proposed development. The Virginia Supreme Court did not find that recklessness had been shown by "clear and convincing evidence", but utilized a less stringent standard, holding only that the evidence was "substantial" and "credible." (App.101). The state appellate court reasoned that the record showed a reckless disregard for truth since petitioner lacked "objective" evidence that respondent was racially motivated; as we explained earlier, that analysis was erroneous as a matter of law. This Court recognized in New York Times v. Sullivan, that "[e]rrors of fact, particularly in regard to a man's mental states and processes, are inevitable." 376 U.S. at

272. If petitioner misconstrued respondent's intentions, his error was precisely "the sort of inaccuracy that is commonplace in the forum of robust debate to which the New York Times rule applies." Bose Corp. v. Consumers Union, 80 L.Ed.2d at 525.

CONCLUSION

For the above reasons a writ of certiorari should be issued to review the judgments and opinions of the Virginia Supreme Court.[74]

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[74] See, n. 1, supra.

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TABLE A

Lower Court Opinioms Regarding Constitutionally Protected Expressions of Opinion 1974 - 1988

I. Federal Courts of Appeals

(1) District of Columbia Circuit

Ollman v. Evans, 713 F.2d 838 (D.C. Cir. 1983) (panel opinion), 750 F.2d 970 (D.C. Cir. 1984)(em banc)

McBride v. Merrell Dow & Pharmaceuticals, Inc., 717 F.2d 1460, 1464, n.7 (D.D. Cir. 1983)

(2) First Circuit

Bose Corp. v. Consumers Union, Inc., 692 F.2d 189, 192-94 (1st Cir. 1982)

(3) Second Circuit

Mr. Chow of New York v. Ste. Jour Azur, S.A., 759 F.2d 219, 223-27 (2d Cir. 1985)

Davis v. Ross, 754 F.2d 80, 85-88 (2d Cir. 1985)
Cianci v. New Times Publishing Co., 639 F.2d 54, 61-64 (2d Cir. 1980)
Edwards v. National Audubon Society, Inc., 556 F.2d 113, 121 (2d Cir. 1977)
Hotchner v. Castillo-Puche, 551 F.2d 910, 912-13 (2d Cir. 1977)
Buckley v. Littell, 539 F.2d 882 (2d Cir. 1976)

(4) Third Circuit

Redco Corp. v. CBS, 11 Media L. Rep. 1861 (3d Cir. 1985)
Avins v. White, 627 F.2d 637, 642 (3d Cir. 1980)
Pierce v. Capital Cities Communications, 576 F.2d 495, 503 (3d Cir. 1978)

(5) Fourth Circuit

National Foundation for Cancer Research, Inc. v. Council of Better Business Bureau, Inc., 705 F.2d 98, 100-01 (4th Cir. 1983)

(6) Fifth Circuit

Wyatt v. Kaplan, 686 F.2d 276, 278, 282(5th Cir. 1983)
Church of Scientology v. Cazares, 638 F.2d 1272, 1286-89 (5th Cir. 1981)

(7) Sixth Circuit

Schultz v. Newsweek, 668 F.2d 911, 913-18 (6th Cir. 1982)
Street v. NBC, 645 F.2d 1227, 1233 (6th Cir. 1981)
Orr v. The Argus Press Co., 586 F.2d 1108, 1114-15 (6th Cir. 1978)

(8) Seventh Circuit

Action Repair v. ABC, 12 Media L. Rep. 1398 (7th Cir. 1985)
Spelson v. CBS, 11 Media L. Rep. 1900 (7th Cir. 1985)

(9) Eighth Circuit

Janklow v. Newsweek, Inc., 759 F.2d 644 (8th Cir. 1985) (panel opinion), 12 Media L. Rep. 1961 (8th Cir. 1986)(en banc)

Lauderback v. American Broadcasting Co. Inc., 741 F.2d 193 (8th Cir. 1984)

(10) Ninth Circuit

Kaplan v. Newsweek, 12 Media L. Rep. 1277 (9th Cir. 1985)

Lewis v. Time, Inc., 710 F.2d 549, 552-54 (9th Cir. 1983)

Information Control Corp. v. Genesis One Computer Corp., 611 F.2d 781 (9th Cir. 1980)

(11) Tenth Citcuit

Rinsley v. Brandt, 700 F.2d 1304, 1307 (10th Cir. 1983)

Dixon v. Newsweek, Inc., 562 F.2d 626, 631 (10th Cir. 1977)

(12) Eleventh Circuit

Keller v. Miami Herald Publishing Co., 778 F.2d 711, 715-17 (11th Cir. 1985)

Hallmark Builders v. Gaylord Broadcasting, 10 Media L. Rep. 1981 (11th Cir. 1984)

II. Federal District Court Opinions

Trump v. Chicago Tribune Co., 12 Media L. Rep. 1060 (S.D.N.Y. 1985)

Korkala v. W.W. Norton, 12 Media L. Rep. 1271 (S.D.N.Y. 1985)

Kelly v. Schmidberger, 12 Media L. Rep. 1297 (S.D. N.Y. 1985)

Koch v. Goldway, 607 F. Supp. 1178 (S.D.N.Y. 1984)

Herbert v.Lando, 596 F. Supp. 1178 (S.D.N.Y. 1984)

Westmoreland v. CBS, 596 F. Supp. 170 (S.D.N.Y. 1984)

Conniff v. Dodd Mead, 593 F. Supp. 266 (S.D.N.Y. 1984)

Dowd v. Calabrese, 589 F. Supp. 1206 (D.D.C. 1984)

Smith v. McMullen, 589 F. Supp. 642 (S.D. Tex. 1984)

Held v. Pokorny, 583 F. Supp. 1038 (S.D.N.Y. 1984)

Spelson v. CBS, 581 F. Supp. 1195 (N.D. Ill. 1984)

Auvil v.Times Journal Company, 10 Media L. Rep. 2302 (E.D. Va. 1984)

Redco Corp. v. CBS, 10 Media L. Rep. 1536 (M.D. Pa. 1984)

Ricci v. Venture Magazine, 574 F.Supp. 1563 (D. Mass. 1983)

Grass v. News Group Publications, 570 F.Supp. 178 (S.D.N.Y. 1983)

Cinker, Inc. v. Northern Gas Co., 578 F.Supp. 112, 114-15 (D. Wyo. 1983)

National Rifle Association v. Dayton Newspapers, Inc., 555 F.Supp. 1299, 1304-05 (S.D. Ohio 1983)

Adler v. American Standard Corp., 538 F.Supp. 572, 576 (D. Md. 1982)

Wynberg v. National Enquirer, 8 Media L. Rep. 2398 (C.D. Cal. 1982)

Cibenko v. Worth Publishers, 510 F.Supp. 761, 765 (D.N.J. 1981)

McManus v. Doubleday, 513 F.Supp. 1383 (S.D.N.Y. 1981)

Loeb v. New Times Communications Corp., 497 F.Supp. 85 (S.D.N.Y. 1980)

Loeb v. Globe Newspaper Co., 489 F.Supp. 481 (D. Mass. 1980)

Yerkie v. Post Newsweek Stations, Michigan, Inc., 470 F.Supp. 91, 94 (D.Md. 1979)

Steaks Unlimited, Inc. v. Deaner, 468 F.Supp. 779 (W.D. Pa. 1979)

Stripling v. Literary Guild of America, 5 Media L. Rep. 1958 (W.D. Tex. 1979)

Church of Scientology v. Siegelman, 5 Media L. Rep. 2021 (S.D.N.Y. 1979)
Hoover v. Peerless Publications, Inc., 461 F.Supp. 1206, 1209-10 (E.D. Pa. 1978)
Hillman v. Metromedia, Inc., 452 F.Supp. 727 (D. Md. 1978)
Guitar v. Westinghouse Electric Corp., 396 F.Supp. 1042, 1048 (S.D.N.Y. 1975)

III. State Court Decisions

(1) Arizona

MacConnell v. Mitten, 131 Ariz. 22, 638 P.2d 689, 692 (1981)
Phoenix Newspapers, Inc. v. Church, 24 Ariz. App. 287, 537 P.2d 1345 (1975)

(2) California

Underwood v. CBS, Inc., 150 Cal. App.2d 460, 198 Cal. Rpt. 48, 52, 53 (Cal. App. 1984)
Walker v. Chronicle Publishing Co., 10 Media L. Rep. 1282 (Cal. App. 1984)

B & B Group v. Los Angeles Herald Examiner, 10 Media L. Rep. 1892 (Cal. App. 1984)

Belli v. Barryhill, 11 Media L. Rep. 1221 (Cal. App. 1984)

Okun v. Superior Court, 29 Cal.3d 442, 175 Cal. Rptr. 157 (1981)

Rollenhagen v. Orange, 116 Cal. App.3d 414 (Cal. App. 1980)

Institute of Athletic Motivation v. University of Illinois, 114 Cal. App.3d 1, 170 Cal. Rptr. 411 (Cal. App. 1980)

Desert Sun Publishing Co. v. Superior Court, 97 Cal. App.3d 49, 158 Cal. Rptr. 519 (Cal. App. 1979)

Blackhawk Corp. v. Ewing, 94 Cal. App.3d 640, 156 Cal. Rptr. 581 (Cal. App. 1979)

Good Government Group of Seal Beach v. Hogard, 22 Cal.3d 372, 586 P.2d 572, 152 Cal. Rptr. 258 (1978)

Sierra Breeze v. Superior Court, 86 Cal. App.3d 102 (Cal. App. 1978)

Gregory v. McDonnell Douglas Corp., 17 Cal.3d 596, 131 Cal. Rptr. 641, 552 P.2d 425 (1976)

Scott v. McDonnell Douglas Corp., 37 Cal. App.3d 277, 112 Cal. Rptr. 609 (Cal. App. 1974)

(3) Colorado

Russell v. McMillen, 685 P.2d 255 (Colo. Ct. App. 1984)
Lane v. Arkansas Valley Pub. Co., 675 P.2d 747, 750, 751 (Colo. App. 1983)
Dorr v. C.B. Johnson, Inc., 660 P.2d 517, 520 (Colo. App. 1983)
Burns v. McGraw-Hill Broadcasting Co., 659 P.2d 1351, 1357 (Colo. 1983)
Burns v. Denver Post, Inc., 606 P.2d 1310, 1311, 43 Colo. App. 325 (Colo. App. 1979)
Bucher v. Roberts, 198 Colo. 1, 3, 595 P.2d 239, 241 (1979)

(4) Connecticut

Strada v. Connecticut Newspapers, 193 Conn. 313, 477 A.2d 1005, 1011 n.12 (1984)
Goodrich v. Waterbury Republican-American, 188 Conn. 107, 448 A.2d 1317, 1231-24 (1982)

(5) Delaware

Slawik v. News-Journal Co., 428 A.2d 15, 16-17 (Del. 1981)

(6) Florida

Hay v. Independent Newspapers, 450 So.2d 293 (Fla. Dist. Ct. App. 1984)

Sepmeier v. Tallahassee Democrat, 10 Media L. Rep. 1285 (Fla. Cir. Ct. App. 1984)

Victor v. News and Sun Sentinel Co., 10 Media L. Rep. 2073 (Fla. Cir. Ct. 1984)

Smith v. Taylor County Pub. Co. Inc., 443 So.2d 1042, 1047 (Fla. App. 1983)

Eastern Airlines, Inc. v. Gellert, 438 So.2d 923, 927 (Fla. App. 1983)

Shiver v.Apalachee Publishing Co., 425 So.2d 1173 (Fla. Dist. Ct. App. 1983)

De Moya v. Walsh, 9 Media L. Rep. 2527 (Fla. Dist. Ct. App. 1983)

Rudesyle v. Coll, 8 Media L. Rep. 1751 (Fla. Cir. Ct. 1982)

From v. Tallahassee Democrat, Inc., 400 So.2d 52 (Fla. Dist. Ct. App. 1981)

Wade v. Stocks, 7 Media L. Rep. 2200 (Fla. Cir. Ct. 1981)
Lampkin-Asam v. Miami Daily News, 6 Media L. Rep. 2086 (Fla. Cir. Ct. 1980)
Coleman v. Collins, 384 So.2d 229, 231 (Fla. Dist. Ct. App. 1980)
Ihl v. Florida Publishing Co., 5 Media L. Rep. 2005 (Fla. Cir. Ct. 1979)
Craig v. Moore, 4 Media L. Rep. 1402 (Fla. Cir. Ct. 1978)
Palm Beach Newspapers v. Early, 334 So.2d 50 (Fla. Dist. Ct. App. 1976)

(7) Georgia

Whitfield v. Southern Newspapers, 10 Media L. Rep. 1771, 1773-74 (Ga. Super. Ct. 1984)
Brooks v. Stone, 9 Media L. Rep. 1823 (Ga. Cty. Ct. 1983)
Walker v. Southeastern Newspapers, 9 Media L. Rep. 1516 (Ga. Cty. Ct. 1982)

(8) Illinois

Costello v. Capital Cities Media, 9 Media L. Rep. 1434 (Ill. Ct. App. 1982)
Catalano v. Pechous, 60 Ill. App.3d 797, 387 N.E.2d 714, 723-24 (1979)

(9) Indiana

Wefler v. Indianapolis Newspapers, 7 Media L. Rep. 1876 (Ind. Cir. Ct. 1981)

(10) Kentucky

Haynes v. McConnell, 642 S.W.2d 902, 904 (Ky. 1982)

(11) Louisiana

Foote v. Sarafyan, 432 So.2d 877, 879, 881 (La. App. 1983)
McHale v. Lake Charles American Press, 6 Media L. Rep. 2478, 2486-87 (La. App. 1980)
Economy Carpets Manufacturers v. Better Business Bureau, 361 So.2d 234 (La. App. 1978)
Mashburn v. Collin, 355 So.2d 879, 885 (La. 1977)

(12) Maine

Caron v. Bangor Publishing Co., 470 A.2d 782, 784 (Me. 1984)

13) Maryland

Hearst Corp. v. Hughes, 297 Md. 112, 466 A.2d 486, 496 (1983)
Kapiloff v. Dunn, 27 Md. App. 514, 343 A.2d 251 (175)

(14) Massachusetts

Fleming v. Benzaquin, 390 Mass. 175, 454 N.E.2d 95, 100-04 (1983)
Pristker v. Brudnoy, 389 Mass. 776, 452 N.E.2d 227, 228-29 (1983)
Cole v. Westinghouse Broadcasting Co., 386 Mass. 303, 435 N.E.2d 1021 (1982)
Myers v. Boston Magazine Co., 380 Mass. 336, 403 N.E.2d 376, 380-81 (1980)
National Association of Government Employees v. Central Broadcasting Corp., 396 N.E.2d 996 (1979)

15) Michigan

Lins v. Evening News, 9 Media L. Rep. 2380 (Mich. Ct. App. 1983)
Searer v. Wometco West Michigan TV, 7 Media L. Rep. 1639 (Mich. Cir. Ct. 1981)

(16) Mississippi

Ferguson v. Watkins, 448 So. 2d 271, 276 (Miss. 1984)

(17) Missouri

Henry v. Hallirburton, 690 S.W.2d 775 (Mo. 1985)
Buller v. Pulitzer Publishing, 684 S.W.2d 472 (Mo. Ct. App. 1984
Iverson v. Crow, 639 S.W.2d 118, 119 (Mo. 1982)
Anton v. St.Louis Suburban Newspapers, 598 S.W.2d 493, 499 (Mo. Ct. App. 1980)

(18) Nevada

Nevada Independent Broadcasting v. Allen, 664 P 2d 337, 342 (Nev. 1983)

(19) New Hampshire

Nash v. Keene Publishing Corp., 12 Media L. Rep. 1025 (N.H. 1985)
Pease v. Telegraph Publishing Co., 426 A.2d 463 (N.H. 1981)

(20) New Jersey

Kotlikoff v. The Community News, 89 N.J. 62, 69, 444 A.2d 1086, 1091 (1982)

(21) New Mexico

Marchiondo v. Brown, 98 N.M. 394, 649 P.2d 462 (1982)

Kutz v. Independent Publishing Co., 97 N.M. 243, 638 P.2d 1088 (1981)

(22) New York

Chalpin v. Amordian Press, 12 Media L. Rep. 1422 (N.Y. Sup. Ct. 1985)
Katz v. Newsday, 11 Media L. Rep. 2456 (N.Y. Sup. Ct. 1985)
Lucille Farm Products v. Dow Jones, 11 Media L. Rep. 2240 (N.Y. Sup. Ct. 1985)

New Deal Restaurant v.WPIX, 11 Media L. Rep. 1965 (N.Y. Sup. Ct. 1985)

Hellman v. McCarthy, 10 Media L. Rep. 1789 (N.Y. Sup. Ct. 1985)

Silsdorf v.Levine, 85 A.D. 297, 447 N.Y.S.2d 936, 941 (1981)

Ritter v. Matthes, 9 Media L. Rep. 1744 (N.Y. Sup. Ct. 1983)

Golden v. Elmira Star Gazette, 9 Media L. Rep. 1183 (N.Y. Sup. Ct. 1983)

New Testament Missionary Fellowship v. Dutton, 9 Media L. Rep. 1174 (N.Y. Sup. Ct. 1982)

Hentel v Knopf, 8 Media L. Rep. 1908 (N.Y. Sup. Ct. 1982)

DeLuca v. New York News, 109 Misc.2d 391, 438 N.Y.S.2d 199 (N.Y. Sup. Ct. 1981)

Gewurz v. Bernstein, 107 Misc.2d 857, 436 N.Y.S.2d 142 (N.Y. Sup. Ct. 1981)

Brower v. New Republic, Inc., 7 Media L. Rep. 1605 (N.Y. Sup. Ct. 1981)

Brady v. Ottaway Newspapers, 445 N.Y.S.2d 786 (App. Div. 1981)

Labor Party v. Anti-Defamation League, 6 Media L. Rep. 2209 (N.Y. Sup. Ct. 1980)

Ithaca College v. Yale Daily News, 433 N.Y.S.2d 530 (N.Y. Sup. Ct. 1980)
Wehringer v. Newman, 60 S.D. 2d 385, 400 N.Y.S.2d 533, 536-37 (1978)
Rank v. New York Times Co., 4 Media L. Rep. 1556 (N.Y. Sup. Ct. 1978)
Rinaldi v. Holt, Rinehart, 42 N.Y.2d 369, 380-81 (1977)

(23) North Carolina

Renwick v. News and Observer Pub. Co., 63 N.C. App. 200, 304 S.E.2d 593, 602, 612 (Ct. App. 1983)
Brown v. Boney, 41 N.C. App. 636, 648, 255 S.E.2d 784, 791 (Ct. App. 1979)

(24) Ohio

Milkovich v. News Herald, 473 N.E.2d 1191, 1196 (Ohio 1984)
Plough v. Schneider, 8 Media L. Rep. 1620 (Ohio Ct. App. 1982)
Greer v. Columbus Monthly, 8 Media L. Rep. 2129 (Ohio Ct. App. 1982)

Ferguson v. Dayton Newspapers, 7 Media L. Rep. 1396, 1398 (Ohio Com. Pleas 1981)

Dupler v. Mansfield Journal, 5 Media L. Rep. 2269 (Ohio C.t App. 1979)

(25) Oklahoma

McCullough v. Cities Service Co., 676 P.2d 833 (Okla. 1984)

Miskovsky v. Oklahoma Publishing, 654 P.2d 587 (Okla. 1982)

(26) Oregon

Bock v. Zittenfield, 66 Or. App. 97, 672 P.2d 237 (1983)

Haas v. Painter, 9 Media L. Rep. 1665 (Ore. Ct. App. 1983)

Cushman v. L. B. Day, 43 Or. App. 123, 602 P.2d 327 (1979)

Walsh v. Consolidated Freightways, 278 Or. 347, 563 P.2d 1205 (1977)

King v. Menolascino, 276 Or. 501, 555 P.2d 442 (1976)

(27) Pennsylvania

Braig v. Field Communications, 310 P. Super. 569, 456 A.2d 1366, 1372-73 (Pa. Super. 1983)
Beckman v. Dunn, 276 Pa. Super. 527, 419 A.2d 583, 587 (Pa. Super. 1980)

(28) Rhode Island

Hawkins v. Oden, 459 A.2d 481, 484 (R. I. 1983)

(29) Tennessee

Leader v. WSM, Inc., 10 Media L. Rep. 1343 (Tenn. Cir. Ct. 1984)
Windsor v. Tennesseean, 654 S.W.2d 680, 685 (Tenn. App. 1983)
Stones River Motors, Inc. v. Mid-South Publishing Co., 651 S.W.2d 713, 720-23 (Tenn. App. 1983)

(30) Texas

A.H. Belo Corp. v. Rayzor, 644 S.W.2d 71, 80 (Tex. App. 1982)
First State Bank v. Ake, 606 S.W.2d 696 (Tex. Civ. App. 1980)

(31) Virginia

Chaves v. Johnson, 230 Va. ___, 2 V.L.R. 216 (1985)
Motsinger v. Kelley, 11 Media L. Rep. 2459 (Va. Cir. Ct. 1985)

(32) Washington

Benjamin v. Cowles Publishing, 10 Media L. Rep. 1970 (Wash. Ct. App. 1984)
Senear v. Daily Journal American, 8 Media L. Rep. 2489 (Wash. Super. Ct. 1982)

(33) West Virginia

Miller v. Charleston Gazette, 9 Media L. Rep. 2540 (W. Va. Cir. Ct. 1983)
Havalunch, Inc. v. Mazza, 294 S.E.2d 70, 75 (W. Va. 1982)

(34) Wisconsin

Fields Foundation, Ltd. v. Christensen, 103 Wis.2d 465, 309 N.W.2d 125 (1981)

Converters Equip. Corp. v.
Condes Corp., 80 Wis.2d
257, 262, 258 N.W.2d
712, 715 (1977)

TABLE B

Virginia Libel Appeals

1925 - 1986

This table summarizes all libel and insulting words cases decided by the Virginia Supreme Court in reported decisions between 1925 and 1986. Set forth after each case are the substance of the alleged libel, the amount of the jury verdict, and the appellate disposition.

The Gazette, Inc. v. Harris, 325 S.E.2d 713 (Va. 1985) (plaintiffs prosecuted for sexual battery; compensatory damages for three plaintiffs of $10,000, $10,000, and $30,000; no punitive damages; affirmed)

Charlottesville Newspapers, Inc. v. Mathews, 325 S.E.2d 713 (Va. 1985) (pregnant plaintiff unmarried; $25,000 compensatory damages; no punitive damages; affirmed)

Port Packet Corp. v. Lewis, 325 S.E.2d 713 (Va. 1985)(child abuse; $50,000 compensatory damages and $100,000 punitive damages; actual damages affirmed, punitive damages reversed)

Kamlar Corp. v. Haley, 224 Va. 699 (1983)(theft; $10,000 compensatory damages on libel and other tort claims; tort verdict not challenged on appeal)

Preston v. Land, 220 Va. 118 (1979) (Crude conduct; compensatory damages of $2,500 and $5,000 for two plaintiffs; reversed)

Newspaper Publishing Corp. v. Burke 216 Va. 800 (1976)(improper conduct by plaintiff physician; $10,000 punitive damages; no compensatory damages; reversed)

Tweedy v. J.C. Penny Co., 216 Va. 596 (1976)(theft; $1,500 compensatory damages; affirmed)

National Association of Letter Carriers v. Austin, 213 Va. 377 (1972) (plaintiffs called "scabs"; $10,000 compensatory and $45,000 punitive damages for each plaintiff; affirmed)

Kroger Co. v. Young, 210 Va. 564 (1976) (theft; $25,000 compensatory damages; reversed)

Zayre, Inc.v. Gowdy, 207 Va. 47 (1966) (shoplifting; $750 compensatory damages on insulting words and false imprisonment claim; affirmed)

Haycox v. Dunn, 200 Va. 212 (1958) (deliberate lie; $65,000 compensatory damages; reversed)

Crawford Co. v. Graves, 199 Va. (1957) (statement denigrating skills of plaintiff doctor; $300 compensatory damages; affirmed)

Alexandria Gazette Corp v. West, 198 Va. 154 (1956)(improper conduct by attorney; $2,500 compensatory damages; reversed)

Luhring v. Carter, 193 Va. 529 (1952) (criminal conduct; $3,000 compensatory damages for insulting words and malicious prosecution; reversed)

Felvey v. Shaffer, 186 Va. 419 (1947) (theft; $15,000 compensatory damages on insulting words and assault claims; affirmed)

Cohen v. Power, 183 Va. 258 (1944) (theft; $1,000 compensatory damages; affirmed)

M. Rosenberg & Sons v. Craft, 182 Va. 512 (1944)(plaintiff allegedly in debt; $400 compensatory damages; reversed)

Fuller v. Edwards, 180 Va. 19 (1942) (verbal abuse of plaintiff; $900 default judgment; affirmed)

Stubbs v. Cowden, 179 Va. 190 (1942) ("whore"; $5,000 compensatory damages; reversed)

Guide Publishing Co.v. Futrell, 175 Va. 77 (1940)(plaintiff married, mother of several children; $500 compensatory damages; reversed)

News Leader Co. v. Kocen, 173 Va. 95 (1939)(crime; $2,500 compensatory damages; reversed)

Federal Land Bank v. Birchfield, 173 Va. 200 (1939)(forgery; $1,500 compensatory damages; reversed)

The Kroger Grocery and Banking Co. v. Rosenbaum, 171 Va. 158 (1938)(theft; $10,000 compensatory damages; affirmed)

People Life Insurance Co. v. Talley, 166 Va. 464 (1936)(writing anonymous letters; $600 compensatory damages; reversed)

Montgomery Ward & Co. v. Nance, 165 Va. 363 (1935)(inefficient job performance; $5,000 compensatory damages; affirmed)

James v. Haymes, 163 Va. 873 (1935) (working slowly on state construction project; $5,000 compensatory damages; reversed)

Madison v. Kroger Grocery Co., 160 Va. 303 (1933)(shoplifting; $250 compensatory damages; reversed)

Bowles v. May, 159 Va. 419 (1932)(illicit affair; $2,500 compensatory damages; reversed)

Weatherford v. Birchett, 158 Va. 741 (1932)(theft; $2,500 compensatory damages; affirmed)

Snyder v. Fatherly, 1258 Va. 335 (1932)(planning to "steal something"; $3,000 compensatory damages; affirmed)

Rosenberg v. Mason, 157 Va. 215 (1931)(theft; $1,500 compensatory damages; reversed)

Chesapeake Ferry Co. v. Hudgins, 155 Va. 874 (1931)(drunkness and having women in room; $7,057.15 compensatory damages; reversed)

Bragg v. Hammack, 155 Va. 419 (1930) (immoral and ungentlemanly conduct; one cent; reversed)

James v. Powell, 154 Va. 96 (1930) (robbery; $1,100 compensatory damages; affirmed)

Powell v. Young, 151 Va. 985 (1928) ("shark" in business; $1,000 compensatory damages; reversed)

Jordan v. Melville Shoe Corp., 150 Va. 101 (1928)(theft; $3,500 damages; reversed)

W.T. Grant Co. v. Owens, 149 Va.906 (1928)(theft; $9,000 compensatory damages; affirmed)

Penick v. Ratliffe, 149 Va. 618 (1927)(bribery; $2,200 compensatory damages; reversed)

The Times-Dispatch Publishing Co. v. Zoll, 148 Va. 850 (1927)(plaintiff arrested; $750 compensatory damages; affirmed)

Wright v. Corfield, 146 Va. 637 (1926) (plaintiff called "cattle"; $1 compensatory damages and $999 punitive damages; affirmed)

Aylor v.Gibbs, 143 Va. 644 (1925) (theft; $1,250 compensatory damagaes; affirmed)

Lightner v. Osborn, 142 Va. 19 (1925) (theft; $3,000 compensatory damages; affirmed)